Regional Seminar on Corporate Governance for Banks in Asia

Controlling Related Party Transactions

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Controlling Related Party Transactions

An Analysis by reference to:

- Accounting Standards
- Listing Rules
Listing Rules

Chapter 14 A of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong
Accounting Standards:

- IAS 24 (International Accounting Standards / IFRS)
- HKAS 24 (Hong Kong Accounting Standards / HKFRS)

* Both effective on accounting periods commencing or after 1 January 2005
Related Party Transaction: IAS / IFRS definition

A transfer of resources, services or obligations between related parties, regardless of whether a PRICE is charged.
IAS 24:

Related Party Relationships:

A normal feature of commerce and business

(between people and / or entities)
Problems / Questions:

- Is it reasonable?
- Is it unreasonable?
- Is it legal?
- Is there a level playing field?
- Is there a conflict of interest?
- Is any body being disadvantaged?
- Is anything being stolen?
RELATED PARTY is one who:
Directly, or indirectly through one or more intermediaries

- Controls / jointly control
- Has interest
- Has significant influence
Entity’s:

- Parent, subsidiary, associate
- Joint venture partner
- Director, key management personnel
- Special purpose vehicles
Individual’s:

- Domestic partner and children
- Children of the individual’s domestic partner
- Dependents of the individual or the individual’s domestic partner

Senior personnel and compensation
Problem Areas:

- Substance of relationship, not merely legal form

- Nominees and concert parties

- Substance override for CONNECTED PERSONS
Controls & Safeguards:

- Governance structure
- Management structure
- Regulatory structure
- Independent auditors
- Independent directors
- Independent advisors
- Independent shareholder vote
- Whistle blowers
Control System:

- To log and track connected transactions
- To review and audit
- To report – internal & external
- To disclose — thresholds and rules
- To approve (or reject) — thresholds and rules
Disclosure:

- Nature of transaction
- How connected
- Amount
- Outstanding balance
- Guarantees
- Indemnities
- Options
- Financial assistance
- Provisions and expense realized
- Aggregation of transactions
Internal Controls & Safeguards:

- Corporate Code of Conduct
- Independent Advice (legal & financial)
- Independent Directors
- Independent Shareholder Vote
External Controls & Safeguards:

- Regulators — banking, securities
- Competing business
- Suitability for listing
- Directors and officers — fit and proper test
Listing Rule Tests:

- Normal commercial terms
- Ordinary / usual course of business
- In the interest of issuer and shareholders as a whole
- Opinion of Independent Advisor and Independent Directors
Bank Specific Problem

Triangular Relationship between:

- Offering Party
- Accepting Party
- Financing related parties
Ultimate Sanctions

Criminal Sanctions:

- Under the Securities and Futures Ordinance
- Under THEFT and other laws
End of Presentation

Thank You!